

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Dunbarton Corporation Rediframe Division
Dothan, Houston County, AL**

USEPA ID NUMBER ALR000012674

ORDER NO. 12-XXX-CHW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter “the Department” or “ADEM”) and Dunbarton Corporation Rediframe Division (hereinafter “Dunbarton”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and the Alabama Hazardous Wastes Management and Minimization Act (hereinafter “AHWMMA”), Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Dunbarton operates a steel door and door frame manufacturing facility with EPA Identification Number ALR000012674 located at 1101 Technology Drive in Dothan, Houston County, Alabama.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of solid and hazardous waste regulations in accordance with the federal Solid Waste Disposal Act §§ 1002 to 11012, 42 U.S.C. §§ 6901 to 6992k, as amended. In addition, the Department is authorized to administer and enforce the provisions of the AHWMMA, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.).

DEPARTMENT'S CONTENTIONS

4. On June 20, 2011, a representative of the Department conducted a compliance evaluation inspection ("CEI") of Dunbarton. The CEI and a review of Dunbarton's compliance showed the following:

(a) Pursuant to ADEM Admin. Code r. 335-14-17-.03(4)(c)1., containers used to store used oil at used oil generator locations must be labeled or marked clearly with the words "Used Oil". ADEM Admin. Code r. 335-14-17-.03(4)(c) requires the labels to be legible from a distance of 25 feet.

Dunbarton did not arrange one 55-gallon drum containing used oil in such a manner that the label was visible for inspection. The label was blocked from view by other containers.

(b) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(b), a large quantity generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 335-14-5 and 335-14-6, and the permit requirements of 335-14-8 unless he has been granted an extension to the 90 day period. ADEM Admin. Code r. 335-14-8-.01(1)(c) requires a permit for the treatment, storage, and disposal of any hazardous waste identified or listed in Chapter 335-14-2.

Dunbarton stored hazardous waste on site for more than ninety days, thereby subjecting Dunbarton to the requirements of ADEM Admin. Code ch. 335-14-5 and the permit requirements of ADEM Admin. Code ch. 335-14-8. Dunbarton stored in its 90-day hazardous waste container storage area two 55-gallon drums of paint waste (F003) with an accumulation start date of March 21, 2011 in excess of 90 days. These drums of paint waste were shipped off-site for disposal on June 30, 2011. Dunbarton neither requested an extension to the 90-day period nor obtained a storage facility permit from the Department. Therefore, Dunbarton operated an un-permitted hazardous waste storage facility.

(c) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)1(i), referencing ADEM Admin. Code r. 335-14-6-.09(5), the owner or operator must inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration of containers and the containment system caused by corrosion or other factors. The owner or operator must also note the number and capacity of hazardous waste containers present. These inspections must be documented in accordance with rule 335-14-6-.02(6)(d). ADEM Admin. Code r. 335-14-6-.02(6)(d) requires the owner or operator to record inspections in an inspection log or summary. He must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

Dunbarton did not conduct weekly inspections of the 90-day hazardous waste container storage area from October 2010 to May 2011. According to its inspection logs, Dunbarton conducted monthly inspections during this time period. In addition, Dunbarton did not document the number of containers present, the capacity of the containers present, and the time of each inspection in the inspection logs.

(d) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)4. referencing ADEM Admin. Code r. 335-14-6-.02(7)(a)1., facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of ADEM Admin. Code ch. 335-14-6. ADEM Admin. Code r. 335-14-6-.02(7)(a)2. requires this program to include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.

Dunbarton's hazardous waste management training program did not include information on accumulation time limits and labeling requirements.

(e) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)4. referencing ADEM Admin. Code r. 335-14-6-.04(3)(c), the contingency plan, which is required by ADEM Admin. Code r. 335-14-6-.04(2)(a), must describe arrangements agreed to by local law enforcement, fire departments, hospitals, contractors, and ADEM Field Operations Division and local emergency response teams to coordinate emergency services.

Dunbarton did not describe in its contingency plan arrangements made with and agreed to by local law enforcement, fire departments, hospitals, contractors, and State and local emergency response teams.

(f) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)4. referencing ADEM Admin. Code r. 335-14-6-.04(3)(e), the contingency plan must include a list of all emergency equipment at the facility, where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

Dunbarton did not include a list of all emergency equipment (including fire extinguishers, spill control kits, and personal protection equipment) with their locations in its contingency plan.

(g) Pursuant to ADEM Admin. Code r. 335-14-3-.04(1)(e), a generator who transports hazardous waste or offers hazardous waste for transportation off-site must have a program in place to reduce the volume and toxicity of such waste to the degree determined by the generator to be economically practicable. A generator must document this program in a written waste minimization plan.

Dunbarton did not have a written hazardous waste minimization plan on site.

5. On July 28, 2011, the Department issued a Notice of Violation (NOV) to Dunbarton citing the abovementioned violations.

6. On August 24, 2011, Dunbarton responded to the Department's NOV.

7. On October 13, 2011, Dunbarton submitted the results of a TCLP analysis performed on a sample of rinsate resulting from pressure washing of its hazardous waste storage area, which indicated that no hazardous waste residues had contaminated the area.

8. Pursuant to Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation(s), including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation(s) upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided that each day such a violation continues shall constitute a separate violation. The total penalty assessed in an order issued by the department shall not exceed \$250,000.00.

9. In arriving at this civil penalty, the Department has considered the following:

(a) SERIOUSNESS OF THE VIOLATION: The Department is not aware of any threat to the health or safety of the public or of any irreparable harm to the environment resulting from the violations.

(b) THE STANDARD OF CARE: Dunbarton did not exhibit a standard of care commensurate with applicable regulatory standards.

(c) ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Based on information provided by the company, the Department no longer contends that the violations conferred an economic benefit on the company.

(d) EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: Dunbarton has cleaned and sampled the surface of the hazardous waste container storage area. A review of the sampling data revealed all applicable chemicals of concerns were at concentrations below appropriate screening values.

(e) HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, Dunbarton has a history of noncompliance with the hazardous waste program rules and regulations.

On April 13, 2006, the Department issued a Warning Letter to Dunbarton for failure to describe arrangements made with local authorities in Dunbarton's contingency plan and failure to list emergency equipment in its contingency plan. These issues are similar to a number of the violations described in this Order.

(f) THE ABILITY TO PAY: Dunbarton has not alleged an inability to pay the civil penalty.

(g) OTHER FACTORS: It should be noted that this Consent Order is a negotiated settlement and, therefore, the Department has determined the appropriate penalty amount to resolve this matter amicably without incurring the unwarranted expense of litigation (see Attachment A).

10. The Department neither admits nor denies Dunbarton's contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interest of the citizens of Alabama.

DUNBARTON'S CONTENTIONS

11. Dunbarton neither admits nor denies the Department's contentions. Dunbarton consents to abide by the terms of this Consent Order.

ORDER

THEREFORE, without admitting that it has violated any statutes or regulations, Dunbarton, along with the Department, desires to resolve and settle the alleged violations cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), as well as the need for timely and effective enforcement; the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Dunbarton agree to enter into this Consent Order with the following terms and conditions:

A. Pursuant to Ala. Code § 22-22A-5(18)a.4. (2006 Rplc. Vol.), Dunbarton agrees to pay to the Department a civil penalty in the amount of \$10,000 in settlement of the violations alleged herein within 180 days from the effective date of this Consent Order. Failure to pay the civil penalty within one hundred and eighty days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. Dunbarton agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check or any other method of payment acceptable to the Department and shall be remitted to:

Office of General Counsel

Alabama Department of Environmental Management

P.O. Box 301463

Montgomery, Alabama 36130-1463

Any payment submitted to the Department pursuant to this Order shall reference Dunbarton's name and address, and the ADEM Administrative Order number of this action.

C. Dunbarton agrees that, independent of this Consent Order, Dunbarton shall comply with all terms, conditions, and limitations of the AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. The parties agree that, subject to the terms of these provisions and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations cited in this Consent Order.

F. Dunbarton agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, Dunbarton agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. Dunbarton also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Dunbarton will be limited to the defenses of Force Majeure, compliance with this Agreement, and physical impossibility. A Force Majeure is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of Dunbarton, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of Dunbarton) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain Federal, State, or local permits shall not constitute Force Majeure. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control of and without the fault of Dunbarton, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The parties agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate;

Dunbarton agrees to not object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order if future orders, litigation, or other enforcement action address new matters not raised in this Consent Order.

I. The parties agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Dunbarton does hereby waive any hearing on the terms and conditions of this Consent Order.

J. The parties agree that this Consent Order shall not affect Dunbarton's obligation to comply with any Federal, State, or local laws or regulations.

K. The parties agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

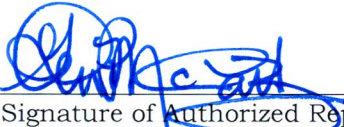
L. The parties agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

M. The parties agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve Dunbarton of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

DUNBARTON CORPORATION REDIFRAME
DIVISION

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


(Signature of Authorized Representative)

Lance R. LeFleur
Director

GLEN P. MCCARTY
(Printed Name)

VICE PRESIDENT, HUMAN RESOURCES
(Printed Title)

JANUARY 11TH, 2012
(Date Signed)

(Date Executed)

ATTACHMENT A

Civil Penalty Synopsis

Dunbarton Corporation Rediframe Division
Dothan (Houston County), AL
EPA ID No. ALR000012674

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Failure to stage a container of used oil so that the "Used Oil" label was visible.	1	\$50	\$25	\$0
Operating an un-permitted hazardous waste storage facility.	1	\$10,000	\$1,000	\$0
Failure to inspect the hazardous waste container storage area weekly.	1	\$400	\$100	\$0
Failure to include in the training program accumulation time limits and labeling requirements.	1	\$400	\$100	\$0
Failure to describe in the contingency plan arrangements made with authorities.	1	\$100	\$ 50	\$25
Failure to list emergency equipment in the contingency plan.	1	\$100	\$50	\$25
Failure to maintain a hazardous waste minimization plan.	1	\$100	\$50	\$0
Totals:	7	\$11,150	\$1375	\$50

Economic Benefit:	\$20,375
Mitigating Factors:	\$0
Ability to Pay:	\$0
Other Factors:	(\$ 22,900)
Civil Penalty:	\$10,000.00

Footnotes: * See the "Department's Contentions" in the Order for a detailed description of each violation and the penalty factors